

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

Solid and Hazardous Waste Bureau

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AUG 24 1995

MONTANA OFFICE

August 6, 1990

WARNING LETTER
CERTIFIED MAIL

Jon C. Nickel
Industrial Quality Manager
ASARCO Incorporated
East Helena, MT 59635

Dear Mr. Nickel:

Enclosed is a report resulting from my June 7 and 8, 1990 inspection of the ASARCO East Helena smelter. This correspondence addresses certain issues that arose from that inspection.

The department is considering the sulfuric acid produced at the East Helena plant as a by-product. ARM 16.44.301(3)(c) defines a by-product as "... a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. "Table 1 of ARM 16.44.302 provides an outline of the regulatory scheme for, among other things, by-products exhibiting a characteristic of hazardous waste. The two areas of concern in this table are "Use Constituting Disposal" (ARM 16.44.302 [3][a]) and "Speculative Accumulation" (ARM 16.44.302 [3][d]).

ARM 16.44.302 (3)(a) stipulates that materials are wastes if they are recycled or accumulated, stored or treated before recycling in such a manner that it is "(a) used in a manner constituting disposal ...; (A) applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land. "Further, ARM 16.44.302 (5)(b) states that "The following materials are wastes, even if the recycling involves use, reuse, or return to the original process: (i) materials used in a manner constituting disposal, or used to produce products that are applied to the land...; "Based on our knowledge, it is the department's position that ASARCO at its East Helena plant is offering for sale a portion of the sulfuric acid which is being applied to or placed on the ground either directly as a herbicide or being used as a material to produce a fertilizer which is applied to the ground.

As we have discussed, please consider the hazardous waste tank portion of my inspection as informal. Hazardous waste tank regulations which have been promulgated by the U.S.EPA are now in the process of being adopted by the state of Montana. However, until formally adopted, this office has no regulatory control over such tanks. For your information, I am enclosing a hazardous waste tank system inspection checklist used during my inspection. As you will note from the checklist, there are numerous portions of the hazardous waste tank requirements that ASARCO must address in the near future. One area of particular concern to me is the presence of liquid at each of the inspection weep holes at each of the tanks. ASARCO should take action to explain the presence of such liquid as soon as possible.

With respect to the portion of my inspection pertaining to laboratory, maintenance and paint shop areas, I was impressed with the overall cleanliness and appearance of these areas. Two areas of concern from these portions of the ASARCO plant which you must address are: laboratory waste and the disposition of solvent and paint waste.

In the past, ASARCO has argued that its disposition of laboratory liquid waste was excluded from regulatory control by ARM 16.44.303 (1)(b)(iv) and the mineral processing waste exclusion. During my inspection, I observed that this laboratory was generating the following liquid wastes: nitric acid; hydrofluoric and hydrochloric acids and acetone. It is the department's position that waste generated from the ASARCO laboratory is not an integral part of the mineral processing operation. In addition, ARM 16.44.303 (1)(b)(iv) excludes from hazardous waste regulatory control mixtures of any waste and hazardous waste identified in ARM 16.44.330 through 16.44.333, if the generator can demonstrate that the mixture consists of wastewater the surface water discharge of which is permitted pursuant to Title 75, chapter 5, MCA, and applicable rules. Further, this mixture exclusion may only apply if the resultant mixture no longer exhibits a characteristic of hazardous waste as provided in ARM 16.44.303 (1)(b)(i). If ASARCO wishes to continue to claim the above mixture exclusion it must first document that this discharge is to a treatment or pretreatment system the discharge of which is permitted under Title 75, chapter 5, MCA. In addition, ASARCO must demonstrate that the waste mixture does not exhibit a characteristic of a hazardous waste as found in ARM 16.44.303 (1)(b)(i). correct

During a May 25, 1984 inspection of the ASARCO East Helena facility, plant personnel indicated that ASARCO no longer used Stoddard solvent in its operations. During my inspection, I observed that the prevalent degreaser used throughout the plant was in fact Stoddard solvent and that the common method of disposition of this waste solvent was to the plant's blast furnace. In addition waste paint and thinner is discharged to the sinter pile. The continued burning of waste solvent in ASARCO's blast furnace ?

is contingent upon certain factors. First, you must determine if the waste solvent is identified as a hazardous waste. If the waste solvent exhibits one or more of the hazardous waste characteristics or is listed as a hazardous waste, then the material would be considered a regulated hazardous waste or potentially a hazardous waste fuel. If the solvent is designated as a hazardous waste, ASARCO must comply with regulations pertaining to hazardous waste generators (ARM 16.44.401 through 418). If the solvent is designated as a hazardous waste fuel, ASARCO must comply with subpart D of 40 CFR Part 266 (ARM 16.44.306 [1][b]).

Within 30 days of receipt of this correspondence, the department is requiring ASARCO to explain in writing its intentions for the future disposition of both laboratory and solvent waste. This explanation must include a time table for implementation of these waste management practices.

During my inspection, I observed a large number of containers being stored with materials which ASARCO intends to reclaim precious metals. ARM 16.44.306 (1)(a) stipulates that hazardous wastes that are to be recycled are to be known as "recyclable materials." Recyclable materials from which precious metals are reclaimed are regulated under subpart F, 40 CFR Part 266. This federal regulation has been adopted by reference in ARM 16.44.306 (4).

As provided in ARM 16.44.402 (1), the department is requiring ASARCO to determine if this recyclable material is a hazardous waste. If the determination is made that the material either exhibits a characteristic of hazardous waste or is a listed hazardous waste, then the following discussion of regulator control of recyclable materials apply.

ARM 16.44.306 (3)(b) states that "Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are required to notify the department of their recycling activities by filing a completed form 8700-12 with the department and are subject to the requirements of 40 CFR 265.71 and 265.72 (dealing with the use of the manifest and manifest discrepancies),... "If it is ASARCO's intent to recycle recyclable materials without storing, then please fill out the enclosed notification form and return it to this office. In addition, the department is requiring that ASARCO submit a written explanation as to procedures it will follow to comply with manifest and manifest discrepancy requirements.

In addition, ARM 16.44.306 (3)(a) stipulates that unless exempted, owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subpart B through L of 40 CFR Parts 264 and 265. In addition, 40 CFR 266.70 (c) requires entities who store recycled materials to maintain the following records to assure that materials are not being accumulated speculatively: records showing

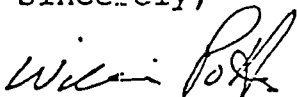
the volume of materials stored at the beginning of the calendar year; the amount of materials generated or received during the calendar year; the amount of materials remaining at the end of the calendar year. If it ASARCO's intent to store recyclable materials prior to recycling, the department is requiring that, within 30 days of receipt of this correspondence, it must submit in writing its intent and a plan for complying with the above regulations.

ARM 16.44.325 does provide ASARCO with the mechanism to seek to have recyclable materials reclassified to a material other than a waste. In addition, ARM 16.44.326 provides the criteria the department must follow in determining a reclassification request. I would recommend that you review these regulations as to their applicability to the ASARCO situation.

For your information, I am enclosing a copy of current state hazardous waste regulations. Also, as you requested I am enclosing literature on solvent distillation equipment.

If you have any questions on the above correspondence, please call or write.

Sincerely,



William J. Potts
Hazardous Waste Program